



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

DEC 2 2 2003

Paul E. Davis, Director
Division of Water Pollution Control
Tennessee Department of Environment and Conservation
L & C Annex
401 Church Street
Nashville, Tennessee 37243-1534

Dear Mr. Davis:

The purpose of this letter is to provide the results of the Environmental Protection Agency (EPA) Clean Water Act Section 303(c) review of Tennessee's emergency rulemaking to adopt a nutrient criterion applicable to all waters of the State. Rule 1200-4-3-.03(3)(k) was adopted on July 22, 2003 by the Tennessee Quality Control Board, and was "approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5," on July 23, 2003. The revision to Tennessee water quality standards and the legal certification required by 40 CFR 131.6(e) were submitted to EPA by letter dated July 31, 2003.

The narrative criterion establishes multiple endpoints and methodologies as a basis for implementation for protection of the State's designated use of "Fish and Wildlife". The criterion allows for measurement of compliance in the ambient environment using assessments of habitat or biological integrity. The criterion can also be implemented through the derivation of ambient concentrations of nutrients using a methodology developed by the State ["Development of Regionally-based Interpretations of Tennessee's Narrative Nutrient Criterion," TDEC, August 2001] for free-flowing streams, or through the use of other scientifically defensible methods, where other methodologies are considered to be more appropriate or accurate for implementation in specific water bodies or water body types. The criterion also provides for protection of downstream waters and their designated uses.

Based on our review of the State Methodology for these waters, EPA finds the State's selection of the 90th percentile values of the State subcoregion databases to be one scientifically defensible approach for development of nutrient criteria for free-flowing streams in the State. The State's approach will result in the development of criteria values that EPA considers protective of biological integrity of State waters and is consistent with methods recommended in EPA's nutrient criteria development guidance for rivers and streams (U.S. EPA. 2000. Nutrient Criteria Technical Guidance Manual: River and Streams, U.S. Environmental Protection Agency, Washington, DC. EPA-822-B00-002).

WMD/SMTB/MSMTS

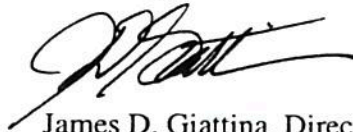
FILE: TN

As part of the review, EPA initiated informal consultation pursuant to the Endangered Species Act (ESA) with the Cookeville, Tennessee Field Office of the United States Fish and Wildlife Service (FWS) on September 19, 2003. EPA transmitted to FWS a Biological Evaluation (BE) including a determination that the criterion was not likely to adversely affect federally listed species or their critical habitats occurring in the State waters. On September 23, 2003, FWS concurred with EPA's evaluation.

Based on our review, the revision to Tennessee water quality standards meets the requirements of 40 CFR Part 131 and Section 303 of the Clean Water Act. Therefore, Rule 1200-4-3-.03(3)(k) is approved for all purposes of the Clean Water Act. Since the State methodology for implementation of the narrative nutrient criterion for free-flowing streams is based on a database which includes samples collected only through the year 1999, EPA recommends that the State incorporate additional data into the database, and refine the methodology, if appropriate, during future triennial reviews of Tennessee water quality standards.

Please contact me at 404/562-9470 if you have questions concerning EPA's Clean Water Act Section 303(c) review.

Sincerely,

A handwritten signature in black ink, appearing to read 'J. Giattina', with a stylized flourish at the end.

James D. Giattina, Director
Water Management Division

cc: Greg Denton, TDEC